

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 111 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BALVANTRAY M JUNEJA

Versus

GODHRA URBAN CO-OP. BANK LTD., & ANOTHER

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Appearance:

MR PM THAKKAR for Petitioner

MR JV DESAI for Respondent No. 1

MR BHARAT T RAO for Respondent No. 2

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CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 13/02/97

ORAL JUDGEMENT

1. This is an Appeal From Order under Order 43 Rule 1 CPC, wherein the appellant is the original judgment debtor, the first respondent is the judgment creditor and respondent no.2 is auction purchaser.
2. The relevant and pertinent facts giving rise to the present appeal are to the effect that the first

respondent is a Co-operative bank which had extended certain financial facilities to the appellant, and ultimately was required to file suit for recovery of its dues. The suit was decreed in favour of the first respondent-bank. The Bank thereafter filed Special Darkhast No. 11/87 for the execution of the decree passed in its favour. The execution proceedings continued upto a stage where immoveable property of the appellant-judgment debtor was put to auction, which was purchased by respondent no.2 herein. At this stage, the appellant-judgment debtor gave an application in the execution proceedings at ex.27, taking up various contentions in respect of the procedural aspect of the auction held, and prayed therein that the execution court should not confirm the sale, as a consequence of the auction held under orders of the Court. The executing court rejected the application by order below ex.27. It is this order which is the subject matter of the present appeal under Order 43 Rule 1 CPC.

3. At this stage, it may be noted that the appellant had filed Civil Application No. 702/90 in the present appeal for stay of further proceedings of the Darkhast in question. This Court had, by various interim orders, granted time to the appellant-judgment debtor, on specific requests made by the appellant in this regard, to make payment to the judgment creditor namely; the respondent-bank. While granting time for this purpose, this Court had extended ad-interim stay of the Darkhast from time to time. There are a number of such interim orders on the record of the Civil Application. Only some of these orders are relevant. By an order dated 7th August, 1990 ( Coram: B.S.Kapadia, J.), the appellant was directed to deposit a further amount of Rs.10,000/in the trial court within the period of one week. Thereafter it appears that the counsel for the appellant continued to ask for time in order to comply with the said direction.

3.1 The next relevant order dated 20th February, 1991 ( Coram: K.G.Shah, J.) records the fact that the sum of Rs. 20,000/- has been deposited by the applicant-appellant in the executing court, and respondent-bank was permitted to withdraw the amount.

3.2 The next relevant order is dated 21st August, 1991 ( Coram: B.J.Shethna, J.), which records the fact that the appellant had, till then, deposited in all Rs.40,000/- in different instalments as per the various orders passed by this Court on different dates. Learned counsel for the appellant then made a prayer, which is

recorded in the said order, that further time be granted to pay up the remaining amount of Rs. 29,755/-. Under the said order, the appellant was directed to deposit Rs.15,000/- on or before 31st October, 1991, and the balance amount of Rs. 14,755/- before January, 1992. It was specifically directed in the said order that if the said amounts are not so deposited, the interim relief shall stand vacated w.e.f. 31st January, 1992.

3.3 In the context of this interim order, a query was put to learned counsel for the appellant as to whether the amounts have been deposited as directed. Learned counsel for the appellant was unable to make any statement either way.

3.4 Learned counsel for the appellant then informed the Court that the aforesaid order of this Court was conveyed by the counsel to the appellant by Registered Post A.D. letter dated 21st August, 1991, in order that the same could be complied with by the appellant. A copy of the said letter was also sent by registered post to the advocate of the appellant appearing in the executing court. The registered letter addressed to the appellant (by counsel for the appellant) was ultimately returned by the postal department on 3rd September, 1991, bearing endorsement dated 27th & 28th August, 1991 to the effect that the party is not available. So far as the registered letter addressed by counsel for the appellant to the briefing advocate, the same has been received by the briefing advocate on 24th August, 1991, to which the said advocate has not replied to the learned counsel appearing for the appellant in the present appeal.

3.5 Learned counsel for the appellant further states that even thereafter on 11th January, 1995, he had sent a telegram to the appellant to come and meet the counsel, but the latter had not responded. A further urgent telegram was sent on 22nd January, 1996 to the same effect, to which also the appellant did not respond.

3.6 From these facts, learned counsel for the appellant submitted that he is unable to assist the Court any further except to make his submissions on the technical aspects of the matter.

4. I am of the opinion, with reference to various interim orders passed in the Civil Application referred to hereinabove, that the appellant-judgment debtor has been shown sufficient leniency by this Court, by granting more than sufficient time to satisfy the decree passed against him, and in order that his property may not be

put to sale, ( although the same had already been subjected to the auction in the Darkhast in question). However, for reasons which I need not enter into, it appears that either the appellant has satisfied the decree passed against him, or has been unable to comply with the directions given by this Court as referred to hereinabove, and consequently, the execution proceedings have proceeded further, on the interim stay of execution having been vacated ipso facto on the noncompliance of such directions.

5. In the circumstances aforesaid, any submissions which the learned counsel for the appellant may make on the technical aspects of the matter would be merely academic, and would serve no useful purpose whatsoever. Learned counsel for the appellant was unable to make any submission to persuade to me to take a contrary view, and ultimately conceded that his submissions on the matter could only be on the technicalities of the case, and on the facts of the case, only academic.

6. In the premises aforesaid, I am of the opinion that no useful purpose is likely to be served by merely giving a technical decision in the present appeal. In my opinion, the same does not require any further discussion, and accordingly the appeal stands disposed off as dismissed with no order as to costs.

7. Yadi to be sent to the executing court forthwith i.e. not later than 20th February, 1997.

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Amp/-